Internal Revenue Service
memorandum
CC:WR:PNW:SEA:TL-N-7764-96
CLCampbell

Date: April 15, 1999

To: Internal Revenue Service
Attn: [redacted]
Examination Division
[redacted]

From: District Counsel
Seattle M/S W670

Subject: [redacted]
[redacted] Tax Matters Partner

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Collection, Criminal Investigations, Examination or Appeals, recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Collection, Criminal Investigations, Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

We have discussed with our National Office the memorandum concluding that [redacted] is the tax matters partner for the former [redacted]

[redacted]. The National Office agrees that given the unusual circumstances in this case, it is appropriate to conclude that [redacted] is the tax matters partner. [redacted], (b)(7)a, (b)(5)(DP)

Under the regulations and Section 6229 it is always safe to get a consent to extend the statute from each partner against whom any tax would be assessed but that is as problematic in this case as deciding who is the TMP after the mergers since neither partner exists any more. We would still be relying on the effect of mergers under state law.

CATHERINE L. CAMPBELL
Attorney

cc: Janet Hughes
Pat Golembiewski

Internal Revenue Service
memorandum
CC:WR:PNW:SEA:TL-N-7764-96
CLCampbell

Date: March 31, 1999

To: Internal Revenue Service
Attn: [redacted]
Examination Division
[redacted]

From: District Counsel
Seattle M/S W670

Subject: [redacted]

DISCLOSURE STATEMENT

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After reviewing a prior memorandum discussing the question who is the tax matters partner of certain partnerships in which Estate subsidiaries are partners, you corrected certain facts

relating to the [redacted]. We have considered the additional information provided with respect to [redacted]. We conclude that [redacted], as surviving corporation following the merger of [redacted] into [redacted], is the tax matters partner.

[redacted] was formed under the laws of North Carolina. [redacted] owned the [redacted]. During the years under examination, [redacted] through [redacted], [redacted], a subsidiary of [redacted],[1] was the general partner in [redacted] [redacted] held a [redacted]% interest in [redacted]. The limited partner, holding a [redacted]% interest in [redacted], was [redacted]. [redacted] was a wholly owned subsidiary of [redacted].

In [redacted], the partners of [redacted] decided to "convert"[2] to a limited liability company formed in Virginia. Both consents to action executed by the partners recited that, after the formation of [redacted] in Virginia, the partners would contribute their partnership interests in [redacted] to the LLC. Following the transfer, the LLC through its manager, [redacted], would dissolve, wind up, and terminate [redacted] and would distribute the assets to LLC. Then LLC would execute a Plan of Dissolution, Blanket Conveyance, Bill of Sale and Assignment, and would file in North Carolina the Limited Partnership Certificate of Cancellation.

[redacted] filed articles of organization of a limited liability company in Virginia. The articles stated that [redacted] would be the manager. On [redacted], the certificate of organization was issued by the State of Virginia. Following the formation of the LLC, [redacted] and [redacted] assigned their partnership interests in [redacted] to [redacted] as a capital contribution. [redacted] adopted the plan of dissolution of [redacted] effective [redacted]. The plan recited that [redacted] was the successor to all partnership interests of the partnership by virtue of the assignments. [redacted] holds itself out in the plan as the successor in interest of the former partners. As successor, [redacted] agreed to dissolve and terminate [redacted]. [redacted] acted through its manager, [redacted].

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[1] [redacted] was, during the years under examination, a wholly owned subsidiary of the [redacted].

[2] The partners used the word "conversion" in the consent to action. Other than the use of that term in the consents, there is no evidence that the limited partnership "converted" as contemplated by either South Carolina or Virginia law.

On [redacted], a Cancellation of Certificate of Domestic Limited Partnership was filed in North Carolina.

[redacted] through [redacted], the representative for [redacted] contends that [redacted], which was the transferee of certain assets of [redacted], is the tax matters partner authorized to sign the waivers of the statute of limitations. [redacted] was merged into [redacted] which was then merged into [redacted] merged into [redacted]. The only relationship between [redacted] and [redacted] is the asset transfer. We do not agree that [redacted] is the TMP absent a designation effective under I.R.C. § 6231 and Treasury Regulation § 301.6231(a)(7)-1. That regulation provides that the partnership can designate a TMP if the person selected was a general partner either during the tax year for which the designation is made or is a general partner at the time the designation is made. Since there is no partnership in existence at this time, the latter option is not viable.

At the close of the years under examination, [redacted] was a limited partner and [redacted] was the general partner in [redacted]. Subsequently, during the course of the examination, it was determined that [redacted] was defunct, so pursuant to the regulations, the Service, after notice to [redacted] and the former officer of [redacted], designated [redacted] as the tax matters partner.

One question here is whether [redacted] is in anyway a successor to [redacted]. We conclude that it is not. The partners in [redacted] transferred their partnership interests to [redacted]. Under the laws of North Carolina, the transfer of the interest of the limited partner, [redacted], did not dissolve the limited partnership. N.C. Gen. Stat. section 59-702[3] provides that the assignment of a partnership interest does not dissolve a limited partnership. However, that statute also states that the general partner ceases to be a general partner upon assignment of all his partnership interest. Thus, under North Carolina law, upon the assignment of the general partnership interest of [redacted] [redacted] had no general partner. Under N.C. Gen. Stat. section 59-702, a general partner ceases to be a general partner upon

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[3] N.C. Gen. Stat. section 59-701 et. seq. is part of the revised uniform limited partnership act for North Carolina.

assignment of all his partnership interest. [redacted] had no other general partner.[4]

A nonjudicial dissolution of a limited partnership is effected upon the withdrawal of a general partner if there is no other general partner. The limited partnership is dissolved and its affairs shall be wound up upon the event of withdrawal of a general partner unless at the time there is at least one other general partner. N.C. Gen. Stat. section 59-801(3). A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership. N.C. Gen. Stat. section 59-203. Here, the Cancellation of Certificate of Limited Partnership was filed on [redacted] by the president of the general partner, [redacted].

The analysis of the status of the limited partnership under North Carolina law is important because the Estate intimates that the limited partnership became or was "converted" to the LLC. That is not the case. As we have stated, the limited partnership was terminated under North Carolina law. Now we must answer the question whether there was any evidence that any type of conversion or merger was effected under the laws of Virginia.

Under Virginia law, a foreign partnership or limited partnership may convert to a LLC by filing articles of organization that meet the requirements of 13.1-1011. The articles of conversion must state the name of the foreign limited partnership, the place of registration of the limited partnership, and the terms and conditions of conversion. Va. Code section 13.1-1010.1. If there is a conversion, the limited partnership that has been converted shall be deemed for all purposes the same entity that existed before the conversion.

In this case, the articles of organization for [redacted] were filed in Virginia. Those articles make no reference to [redacted], the North Carolina limited partnership. The articles state no conditions of conversion and, in fact, do not refer to any "conversion" at all.

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[4] North Carolina law provides that the assignee of a general partnership interest in a limited partnership may become a limited partner. N.C. Gen. Stat. section 59-704(a).

Under Virginia law partnerships can be merged with domestic or foreign partnership, limited partnerships, LLC's, or corporations if merger is permitted under the laws under which the foreign limited partnership, inter alia, is organized to permit merger and if the merger complies with Virginia law. Since Virginia law requires a plan of merger and since there is clearly no plan of merger here, we can readily conclude that there was no merger of [redacted] and [redacted].

Since there is no surviving entity which succeeds to the rights of the limited partnership under theories of conversion or merger, it is necessary to determine at what point in time we should look to the

partnership to see who is the tax matters partner. In *Chef's Choice Produce Ltd. v Commissioner*, 95 T.C. 388 (1990),[5] the Tax Court confronting a situation where it needed to determine who was the tax matters partner for a partnership which no longer existed decided that it did not need to address arguments concerning whether the partnership was merely dissolved under state law and had a continued existence to wind up its affairs or whether it was terminated under state law. Since under the "aggregate" theory of partnership law, the partners and not the partnership are the real parties in interest in the proceeding and the dissolution or termination of the partnership does not affect the procedure. *Id.* The continued existence of the partnership entity is not essential to the operation of the partnership procedures. Further, the applicability of the partnership audit procedures is determined at the end of the tax years for which adjustments are proposed. *Id.* The dissolution or termination of the partnership in a year subsequent to the years adjusted have no effect on the TEFRA procedures. *Id.*

As of the end of the taxable years under audit, i.e. [redacted] and [redacted], [redacted] was a viable limited partnership under the laws of North Carolina. [redacted] was the limited partner and [redacted] was the general partner. The Service determined at the commencement of the audit that [redacted] was defunct. The Service resorted to the procedure set forth in Treasury

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[5] In *Chef's Choice*, *supra*. the partnership had filed bankruptcy and the tax matters partner had been disqualified under the regulations. The Service appointed a TMP and sent an FPAA to the newly designated TMP. The question before the court was whether the TMP so designated could file a petition on behalf of the TEFRA partnership.

Regulation § 301.6231(a)(7)-1(p)(3)(ii) and (q) to appoint the only other partner, a limited partner, as TMP.[6] [redacted] was appointed TMP for the years under examination.

In the attached memorandum, we have discussed the fact that following a series of mergers under [redacted] and Delaware laws, [redacted] as the surviving corporation following the mergers is the TMP authorized to act for [redacted]. Under state laws, the surviving corporation following the merger succeeds to all rights and privileges of the merged entity. [redacted] & 8 Del. C. 259.

We do not agree that the sole member of [redacted], i.e. [redacted], is the TMP because the partners of [redacted] assigned their interests to [redacted] effecting a dissolution of the partnership. Under state law, [redacted] did not merge into, convert to or otherwise "become" [redacted]. We conclude that [redacted] as the surviving entity following the mergers of [redacted], previously designated TMP for years [redacted] and [redacted], is the TMP authorized under state law to sign waivers of the statute of limitations and other agreements binding on [redacted].

CATHERINE L. CAMPBELL
Attorney

Attachment:
As stated.

cc: M. Catherine McKenna
Janet Hughes
Paul G. Accettura
Pat Golembiewski

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[6] The Service designated the tax matters partner in [redacted] after the partnership interests had been assigned to the LLC and after the limited partnership had been terminated. Under the reasoning in *Chef's Choice, supra.*, the Service properly looked to the partners as of the end of the years under examination to determine who could be designated TMP and to further decide who was entitled to notice. [redacted] was notified through the person who was president of [redacted] as of the end of the [redacted] year.